Amendments to HAR

- 1. ACT 203
- 2. Add Advisory Opinion examples
- 3. Incorporate FEC Rules

ROADMAP

- Chapter 160 Election Campaign Contributions and Expenditure
 - Subchapter 1 General Provisions
 - Subchapter 2 Registration, Organization, and Recordkeeping
 - Subchapter 3 Contribution and Expenditure Reporting, Limitations, and Prohibitions
 - Subchapter 4 Partial Public Financing of Campaigns
 - Subchapter 5 Compliance
 - Act 203 Highlights

Subchapter 1 General Provisions

- Advertisement Clarified "sundry items"
 - The same as 11-191
 - Does not include:
 - Clothing
 - Bumper stickers
 - Pins
 - Buttons
 - Checks

Reference: Sec. 11-191, HRS; 3-160-2, Rule draft

Clearly Identified

- Same as 11-191
- Examples:
 - The Governor
 - Your Senator
 - The incumbent
 - The Republican gubernatorial nominee
 - The Democratic candidate for the 60th House seat

Reference: Sec. 11-191, HRS; 3-160-3, Rule draft

Contribution

- Shirts at a reduced cost
- Accounting and Law services at a reduced cost
- Candidate appearances
- Golf Tournament Charity Fundraiser
- Donation of artwork
- Union mailouts of candidate brochures

Reference: Sec. 11-191, HRS; 3-160-4, Rule draft

No Contribution

- Internet provider web-site available to anyone
- News Anchor candidate
- Food for "Talk Story" Community event
- Discounted bulk sale theater tickets
- Cable TV

- Expressly Advocating Furgatch Test
 - Susceptible to no other interpretation
 - Communication is unmistakable
 - Clear plea for action
 - Reasonable minds could not differ

Reference: Sec. 11-191, HRS; 3-160-7, Rule draft

- Expenditure is not independent if:
 - Shared costs with candidate, etc
 - Candidate, etc. materially involved in decisions re:
 - Content of communication
 - Intended audience
 - Means or mode of communication
 - Specific media outlet
 - Timing or frequency
 - Size or prominence

Reference: Sec. 11-191, HRS; 3-160-9, Rule draft

Office

■ Funds received for state office cannot be used for a federal election

Reference: Sec. 11-191, HRS; 3-160-10, Rule draft

Advertisements

- Notice
 - Paying party's name and regular mailing address in ad
 - Notice to be clear and conspicuous
 - Sufficient type size
 - Printed box set apart
 - Reasonable color contrast
 - Radio, tv, cable, satellite

Reference: Sec. 11-215, HRS; 3-160-11, Rule draft

- Chairperson and vice-chairperson
 - Chair elected by majority
 - Vice-chair elected by majority

Reference: Sec. 11-192, HRS; 3-160-13, Rule draft

Subchapter 2 Registration, Organization, and Recordkeeping

- Committee must report all contributions
 - Including sale of chicken, chili, cookies, breakfasts, cookbooks, and calendars
 - "Payee" must be reported, and this does not mean the credit card company!

Reference: Sec. 11-212 and 11-213, HRS; 3-160-15, Rule draft

- Noncandidate committee registration
 - Federal PAC or out-of-state committee must register
 - Committee must segregate expenditures to state and local candidates in a separate bank account or a ledger account

Reference: Sec. 11-196.5, 11-212 and 11-213, HRS; 3-160-16, Rule draft

Recordkeeping

- Each candidate, treasurer or other person required to file any statement or report shall:
 - Keep all records for audit, inspection or exam for:
 - Not less than five years
 - Or as otherwise ordered by the executive director

Reference: Sec. 11-195, HRS; 3-160-19, Rule draft

- Termination of campaign spending commission registration
 - No remaining surplus or deficit
 - Accompanying bank statements
 - All penalties levied by the commission have been paid

Reference: Sec. 11-191 and 11-213, HRS; 3-160-20, Rule draft

Subchapter 3 Contribution and Expenditure Reporting, Limitations, and Prohibitions

Contributions; limits for persons

- A corporation contributing to its own noncandidate committee is subject to the \$1,000 contribution limit during an election period.
 - Example
- Contributions by partners and the general partnership
 - Example

Reference: Sec. 11-204, HRS; 3-160-22, Rule draft

- Contributions or expenditures by a person or political party "financed, maintained or controlled" by another person or political party shall be aggregated.
 - Owns a controlling interest
 - Authority or ability to direct or participate in governance
 - Authority or ability to hire, appoint, or otherwise control officers
 - Common or overlapping membership
 - Common or overlapping officers or employees
 - Formal or on-going relationship
 - Provides funds or goods in a significant amount or on-going basis
 - Causes or arranges for funds in a significant amount or on-going basis
 - Active or significant role in formation
 - Similar patterns of contributions

- Contributions by limited liability company (LLC)
 - Contribution by an LLC treated as a <u>partnership</u> by IRS shall be considered a contribution from a partnership
 - Contribution by an LLC treated as a <u>corporation</u> by IRS shall be considered a contribution from a corporation
 - Contribution by an LLC with a <u>single natural person</u> member that is not treated as a corporation by IRS shall be considered a contribution by the single member

Reference: Sec. 11-204, HRS; 3-160-24, Rule draft

- Contributions by limited liability partnerships (LLP)
- Contributions by limited liability limited partnerships (LLLP)

- ACT 203 Contributions by state or county contractors
 - A person, as defined in 11-191 HRS;
 - Who enters into any contract with the State or counties;
 - For:
 - The rendition of "personal services"
 - Buying property
 - Furnishing any material, supplies, or equipment to the State or counties
 - Selling any land or building to the State or counties
 - In whole or in part from funds appropriated by the legislative body
 - At any time between the execution of the contract through the completion of the contract (final payment)
 - To directly or indirectly make a contribution . . . Or knowingly solicit any contribution . . .

Reference: Sec. 11-205, HRS; 3-160-25, Rule draft

- "Personal services"
 - The performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting. IRC section 448(d)(2)(A)

- Separate segregated funds established by a gov't contractor may contribute.
- Stockholders, officers, or employees of a gov't contractor may contribute in their own name from their personal assets.

- Loans to candidates or committees
 - Proper loan documentation

Reference: Sec. 11-205.6, HRS; 3-160-28, Rule draft

Authorized Campaign Expenditures

- Authorized expenditure examples
- Unauthorized expenditure examples
 - Expenditures for a federal elective office
 - Expenditures to endorse another candidate
 - Gifts and leis for other legislators
 - Food and beverage for legislator's office staff
 - Legislator pays for travel and lodging for a conference

Reference: Sec. 11-191, HRS; 3-160-31, Rule draft

- Electioneering communications
 - Every person who makes a disbursement for electioneering communications in an aggregate amount of \$2,000 during a calendar year shall file a statement of information.

Reference: Sec. 11-207.6, HRS; 3-160-35, Rule draft

- Separate Segregated Fund
 - Contributions to a separate segregated fund must be voluntary.
 - The separate segregated fund may suggest a guideline for contributions.

Reference: Sec. 11-205.5, HRS; 3-160-36, Rule draft

Subchapter 4 Partial Public Financing of Campaigns

- Application for public funds
 - Certify that all penalties and any other money owed by the candidate to the Hawaii Election Campaign Fund have been paid

Reference: Sec. 11-222, HRS; 3-160-42, Rule draft

- Authorized expenditures of public funds
 - In the case of statewide offices, or non-statewide offices with multi-island constituencies, airfare.
 - Public funds received during a primary election period shall not be carried over and used by the candidate in a general election.

Reference: Sec. 11-223, HRS; 3-160-43, Rule draft

Subchapter 5 Compliance

- Complaints of violations; administrative fines; referral.
 - Referring a complaint to the attorney general or county prosecutor does not preclude any administrative action by the commission at any time.

Reference: Sec. 11-216(c), HRS; 3-160-45, Rule draft

ACT 203 continued

- Limit on contributions from nonresident individuals and persons.
 - Contributions from any individual or person,
 - except for a member of the candidate's immediate family,
 - who is not a resident of the State at the time the contributions are made,
 - shall not exceed 20% of the total contributions received by a candidate
 - For each reporting period.

- Prohibition of fundraising on state or county property.
 - Unlawful to:
 - Solicit a donation of money or other thing of value
 - in connection with an election campaign
 - in a government facility
 - used for the discharge of official duties
 - by an officer or employee of the State or county

- Electronic Filing
 - Added offices:
 - Senate
 - House of Representatives
 - Office of Hawaiian Affairs

Reference: Sec. 11-195(f), HRS

- This was deleted in the 2005 legislative session and we will submit legislation to re-insert:
 - A contribution made by two or more corporations shall be treated as one person when such corporations:
 - (1) Share the majority of their board of directors;
 - (2) Share two or more corporate officers;
 - (3) Are owned or controlled by the same majority shareholder or shareholders; or
 - (4) Are in a parent-subsidiary relationship

Reference: Sec. 11-204(g), HRS

Contributions to a noncandidate committee

- No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election
- Previously, a corporation could contribute an unlimited amount of money from its treasury to its noncandidate committee.

Reference: Sec. 11-204(b), HRS

- Restrictions as to surplus
 - No contributions to community organizations from campaign funds shall be made from the date the candidate files nomination papers to the date of the election.

Reference: Sec. 11-200 and 11-206, HRS

- Electioneering communications
 - Added "or any other coordinated activity"
 - "Coordinated activity" defined as:
 - Payment by any person in cooperation
 - Payment by any person for the production..of any broadcast...
 - Payment by any person for any electioneering communication
 - Electioneering communication means any advertising broadcast from a cable, satellite, television or radio...

Reference: Sec. 11-207, HRS

- Qualifying campaign contributions for public financing
 - Qualifying campaign contributions must come from individual residents of Hawaii
 - The Office of Hawaiian Affairs \$1,500 (up from \$500).
 - Minimum amount of qualifying campaign contributions required only once for the election period.

Reference: Sec. 11-218, 11-219 and 11-221, HRS

Criminal sanctions

• Any person who knowingly or intentionally falsifies any report . . . Shall be guilty of a Class C felony and not eligible for a DAGP or a DANC.

Reference: Sec. 11-229, HRS

SUMMARY

- The Hawaii Administrative Rules were amended to:
 - Facilitate Act 203 changes
 - Provide Advisory Opinion examples
 - Clarify and standardize by using FEC rules where applicable